

## Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 PM-04 INR-07 SY-05 SCA-01 PRS-01  
L-03 INRE-00 SSO-00 /036 W  
-----100028Z 009761 /63  
O 092255Z JUN 77  
FM AMEMBASSY PANAMA  
TO SECSTATE WASHDC IMMEDIATE 2291

C O N F I D E N T I A L SECTION 1 OF 2 PANAMA 4178

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E.O. 11652: GDS  
TAGS: MILI, PN, PQ  
SUBJECT: GOP REQUEST TO EXTRADITE U.S. SOLDIER

REFS: A. PANAMA 3887; B. PANANA 4072

SUMMARY: A SEPARATE MESSAGE (PANAMA 4173) DISCUSSES U.S.  
ARMY SIDE OF CUEVAS CASE (REFTELS); THIS MESSAGE DISCUSSES  
THE LEGAL AND POLICY ASPECTS OF THE GOP EXTRADITION REQUEST.  
PANCANAL GENERAL COUNSEL FINDS GOP REQUEST LEGALLY DEFECTIVE  
IN TWO PARTICULARS, BUT PRC PRINCIPALS AGREED THAT WE SHOULD  
NOT RESPOND OR INDICATE THAT IT SHOULD BE PERFECTED UNLESS USG  
DECIDES THAT CUEVAS COULD BE EXTRADITED IF IT WERE. SENSE OF  
DISCUSSION AT MEETING OF PRC PRINCIPALS AND STAFF WAS THAT THERE  
IS NEITHER AN ABSOLUTE LEGAL DUTY OF USG TO EXTRADITE CUEVAS,  
NOR ANY ABSOLUTE LEGAL BAR TO A POLICY DECISION TO DO SO. U.S.  
ARMY AUTHORITIES WOULD CLEARLY PREFER TO DEAL WITH HIM THEMSELVES  
AND ARE FILING FORMAL CHARGES (INCLUDING ATTEMPTED MURDER IN  
PANAMA) WHICH STARTS INVESTIGATIVE PHASE PRIOR TO COURT MARTIAL.)  
END SUMMARY

1. A MEETING OF PANAMA REVIEW COMMITTEE (PRC) PRINCIPALS AND  
STAFF WAS HELD JUNE 8 TO DISCUSS CUEVAS CASE (REFTELS).

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2. PANCANAL GENERAL COUNSEL MCKABNEY FINDS GOP EXTRADITION  
REQUEST OF JUNE 6 DEFECTIVE IN TWO RESPECTS WITH REGARD TO  
EXTRADITION PROCEDURES PRESCRIBED IN CANAL ZONE CODE, TITLE 6,  
CHAPTER 237, SUBCHAPTER III. FIRST, IT WAS SIGNED BY DIRECTOR OF  
OFFICE OF RELATIONS WITH UNITED STATES "FOR THE FOREIGN  
MINISTER", WHILE SECTION 5085 PROVIDES THAT IT BE SIGNED BY  
FOREIGN MINISTER "OR BY HIS DIRECTION". FORM OF GOP NOTE TO

GOVERNOR, MCKABNEY SAID, MADE IT ARGUABLE WHETHER GARAY HAD SIGNED "BY...DIRECTION" OF THE FOREIGN MINISTER. SECOND, THE ORDER COVERED BY THE FOREIGN MINISTRY NOTE IS AN ORDER OF DETENTION ISSUED BY THE ATTORNY GENERAL, WHILE GOP HAS BEEN ON NOTICE FOR SOME YEARS THAT EXTRADITION REQUESTS MUST INCLUDE ORDER ISSUED BY A COMPETENT COURT. MCKABNEY NOTED THAT BOTH OF THESE DEFECTS APPEARED EASILY REMEDIABLE, AND GOP COULD PROBABLY PERFECT ITS REQUEST IN SHORT ORDER IF ADVISED OF THEM.

3. IN DISCUSSION, IT WAS GENERAL SENSE THAT USG SHOULD NOT RESPOND TO GOP REQUEST, NOR INDICATE LEGAL DEFECTS IN IT, UNLESS DECISION HAD BEEN MADE TO EXTRADITE CUEVAS. IF WE TELL THE GOP THAT ITS REQUEST IS DEFECTIVE, EXCEPT IN CONTEXT OF A DENIAL ON OTHER GROUNDS, WE SHOULD BE PREPARED TO HAND CUEVAS OVER IF GOP SHOULD THEN PERFECT ITS REQUEST.

4. FACT THAT CUEVAS IS NOT A U.S. CITIZEN HAS MAJOR LEGAL

IMPLICATIONS. SECTION 5082 ACCORDS TO GOVERNOR OF CANAL ZONE DISCRETION AS TO DELIVERY OF U.S. CITIZENS, BUT AFFORDS HIM NO SUCH DISCRETION IN CASE OF NON-US CITIZENS WHOS EXTRADITION IS REQUESTED BY GOP.

5. OTHER RELEVANT POINT IS SECTION 5083, WHICH PROVIDES THAT ANY PERSON ACCUSED OF, OR UNDER SENTENCE FOR, A CRIME IN CANAL ZONE MAY NOT BE DELIVERED UNTIL ACQUITTED, PARDONED OR COMPLETED SENTENCE. THUS, SO LONG AS CUEVAS IS UNDER U.S. ARMY CHARGES IN CANAL ZONE, BEFORE OR DURING TRIAL, HE MAY NOT BE DELIVERED. IF HE WERE TO BE EXTRADITED, THE U.S. ARMY CHARGES

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AGAINST HIM WOULD FIRST HAVE TO BE DROPPED. SOUTHCOM ADVISED THAT DROPPING SUCH CHARGES WAS A MATTER OF DISCRETION OF UNIT COMMANDER AND COULD BE DONE AT ANY TIME BEFORE TRIAL IS COMPLETED.

6. FURTHER, IF CUEVAS SHOULD BE TRIED BY U.S. ARMY AND SENTENCED

ANY CONFINEMENT, HE WOULD BE RETURNED TO U.S. TO SERVE SENTENCE. THUS, EVEN UPON COMPLETION OF SENTENCE, HE WOULD NO LONGER BE IN CANAL ZONE AND AVAILABLE FOR EXTRADITION. IF PANAMA SHOULD SEEK TO EXTRADITE HIM FROM U.S., THERE WAS ALSO A SERIOUS QUESTION IN MINDS OF LAWYERS PRESENT WHETHER U.S. CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY WOULD PERMIT USG TO EXTRADITE HIM. IN SHORT, IF CUEVAS IS TRIED BY U.S. ARMY, HE IS PROBABLY LOST TO PANAMANIAN AUTHORITIES.

7. SOUTHCOM ADVISES THAT ARMY AUTHORITIES IN 193RD INFANTRY BRIGADE WOULD CLEARLY PREFER TO DEAL WITH CUEVAS SINCE HE IS A MEMBER OF U.S. ARMY. FURTHER, LT. GEN MCAULIFFE STATED THAT AS

A PRACTICAL, RATHER THAN A LEGAL MATTER, HE MUST ALSO BE CONCERNED AT ADVERSE PSYCHOLOGICAL IMPACT AMONG TROOPS IF CUEVAS WERE EXTRADITED TO PANAMA.

8. GOVERNOR PARFITT NOTED THAT, SINCE CUEVAS IS A NON-U.S. CITIZEN, CANAL ZONE CODE WOULD PERMIT HIM NO OPTION BUT TO ARREST AND DELIVER CUEVAS IF A) GOP WERE TO PRESENT A PERFECTED EXTRA-DITION REQUEST AND B) THERE WERE NO MILITARY CHARGES PENDING AGAINST HIM IN CANAL ZONE. HE STRESSED THAT IN CASE OF ANY DECISION TO DELIVER CUEVAS TO GOP, CANAL ZONE GOVERNMENT MUST HAVE A PERFECTED EXTRADITION REQUEST IN HAND BEFORE MILITARY CHARGES ARE DROPPED, TO PRECLUDE ANY CHANCE OF CUEVAS' ESCAPING FROM CUSTODY THROUGH A LEGAL LOOPHOLE.

9. SENSE OF MEETING WAS THAT UNDER APPLICABLE LAWS AND AGREEMENTS, THERE IS NEITHER AN ABSOLUTE LEGAL DUTY UPON CONFIDENTIAL

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THE UNITED STATES TO DELIVER CUEVAS TO PANAMA, NOR ANY ABSOLUTE LEGAL BAR TO DOING SO IF A POLICY DECISION TO DELIVER HIM WERE MADE.

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ACTION ARA-14

INFO OCT-01 ISO-00 PM-04 INR-07 SY-05 SCA-01 PRS-01  
L-03 INRE-00 SSO-00 /036 W  
-----100027Z 009806 /63  
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FM AMEMBASSY PANAMA  
TO SECSTATE WASHDC IMMEDIATE 2298

C O N F I D E N T I A L SECTION 2 OF 2 PANAMA 4178

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10. ONE ISSUE WHICH ARISES IS WHETHER CUEVAS COULD RECEIVE A FAIR TRIAL FOR HIS OFFENSE IN PANAMA. ALL PRESENT AGREED THAT EVEN THOUGH A NON-U.S. CITIZEN, CUEVAS SHOULD NOT BE DELIVERED TO A

"LYNCH MOB" SITUATION. CHARGE STATED THAT AT PRESENT TIME, AND PARTICULARLY IN VIEW OF ATTENTION ALREADY FOCUSED ON CASE, IT WAS EMBASSY VIEW THAT CUEVAS COULD RECEIVE A FAIR TRIAL UNDER PANAMANIAN LAW. IT WAS NOTED CUEVAS MIGHT BE FOUND MENTALLY INCOMPETENT TO STAND TRIAL IN PANAMA. MOREOVER, CHANCE EXISTS THAT PANAMANIAN NATIONAL GUARD COULD COMMIT ILLEGAL EXCESSES AGAINST WOMEONE WHO HAD SHOT A GUARDSMAN, EVEN IF THERE WERE CONTUING USG INTEREST IN CASE. FINALLY, CHARGE OBSERVED THAT IF CASE SHOULD BECOME A MAJOR CAUSE CELEBRE IN PANAMA AND A SIGNIFICANT FOCUS OF NATIONAL INDIGNATION (THROUGH A HIGH LEVEL OF ADVERSE PUBLICITY, DEMONSTRATIONS, ETC.), IT WOULD THEN BE DOUBTFUL THAT CUEVAS COULD RECEIVE A FAIR TRIAL. USG MUST EXTRADITE HIM BEFORE JAJOR PUBLIC OUTCRY DEVELOPS OR HOLD HIM FOR GOOD.

11. EVEN GIVENTHAT CUEVAS PROBABLY COULD AT THIS TIME RECEIVE A FAIR TRIAL IN PANAMA, THERE MUST STILL BE A POLICY DECISION AS TO WHETHER HE SHOULD BE EXTRADITED. CHARGE SAID PANAMANIAN MEDIA AND PUBLIC PROBABLY WOULD NOT START A HUE AND CRY FOR THE MOMENT WHILE THE EXTRADITION REQUEST IS PENDING, AND THE GOP WAS UNLIKELY TO FOMENT SUCH A SITUATION AT LEAST UNTIL IT HAD

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CONCLUDED THAT ITS REQUEST WAS DEFINITELY GOING TO BE REJECTED.

12. IF THE GOP REQUEST WERE REJECTED, WE COULD AT THE VERY LEAST EXPECT SOME SCATHING COMMENTS IN THE LOCAL PRESS AND SOME ADVERSE REACTION FROM LOCAL STUDENTS AND RADICALS. LT. GEN. MCAULIFFE SAID HIS VIEW WAS THAT USG COULD STAND THE HEAT. CHARGE TENTATIVELY CONCURRED FOR THE MOMENT.

13. THUS, TWO OPTIONS EXIST:

A. HOLD CUEVAS FOR U.S. ARMY PROSECTUION. THIS IS ARMY PREFERENCE. IT WOULD ALLOW GOVERNOR TO REJECT GOP REQUEST CITING SECTION 5083. IT RUNS RISK THAT, DESPITE NORIEGA'S PRELIMINARY INDICATION OF WILLINGNESS TO COOPERATE (REFTTEL), CASE WOULD BE MADE MORE DIFFICULT (BUT NOT IMPOSSIBLE) BY ABSENCE OF PANAMANIAN WITNESSES. WE WOULD AVOID RISK THAT WE WOULD BE DELIVERING CUEVAS TO AN UNFAIR TRIAL IN PANAMA. IT WOULD ALSO AVOID A WAVE OF CONCERNS AND AGITATION IN CANAL ZONE AND IN U.S. CONGRESS. WE COULD DEFINITELY EXPECT SOME ADVERSE REACTION FROM PANAMA. THE IMPORTANT QUESTION IS, HOW BIG? IF CONFINED TO PRESS SNIPING OR A STUDENT DEMONSTRATION AT EMBASSY, IT WOULD PROBABLY BE TOLERABLE AND NOT UNDULY DAMAGE THE OVERALL NATIONAL INTEREST HERE. HOWEVER, IF THE GOP CHOSE TO CONVERT THIS INTO A MAJOR ISSUE IT COULD PROBABLY DO SO--THROUGH REFUSAL TO COOPERATE IN U.S. PROSECUTION, A WIDESPREAD MEDIA CAMPAIGN AND BY FOMENTING MAJOR STUDENT DEMONSTRATIONS DIRECTED

TOWARD CANAL ZONE. ALTHOUGH LESS LIKELY, THIS COULD EVEN HAPPEN SPONTANEOUSLY AMONG RADICAL STUDENTS, WITHOUT GOP PROMPTING. IF IT OCCURRED, THIS COULD BE EXTREMELY BAD--GOVERNOR PARFITT HAS STRESSED, AND WE CONCUR, THAT EACH SUCH DEMONSTRATION FURTHER ERODES THE THIN DEGREE OF PSYCHOLOGICAL STABILITY LEFT IN CANAL ZONE COMMUNITY. SUCH A TRAIN OF EVENTS WOULD INCREASE THE POSSIBILITY OF THE SITUATION GETTING TOTALLY OUT OF HAND.

B. EXTRADITE CUEVAS TO PANAMA FOR TRIAL. THIS WOULD ELIMINATE  
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POSSIBILITY OF VIOLENCE IN PANAMA ON THIS PARTICULAR CASE. HOWEVER, IT RUNS THE RISK OF PROVOKING AN ADVERSE REACTION IN THE CANAL ZONE AND IN CONGRESS. IF CONGRESSSIONAL REACTION SHOULD BE STRONGLY NEGATIVE ("SELLING GI DOWN THE RIVER FOR STATE DEPT.'S PRECIOUS TREATY") IT COULD ENGANDER TREATY RATIFICATION PROSPECTS IN U.S. (AND PROVOKE MUCH WORSE REACTION HERE). IN THE CASE OF THE CANAL ZONE, WE BELIEVE (BUT CANNOT BE CERTAIN) THAT ADQEUADE PUBLICITY REGARDING THE FACTS OF THE CASE WOULD RENDER ADVERSE REACTION CONTAINABLE HERE, ALTHOUGH TREATY OPPONENTS WOULD UNDOUBTEDLY PICK IT UP TO USE AS A SCARE TACTIC. THERE IS ALSO THE POINT HAT CUEVAS' MOST SERIOUS ALLEGED ACTS WERE COMMITTED IN PANAMA AGAINST A PANAMANIAN LAW ENFORCEMENT OFFICER. IN OTHER FOREIGN COUNTRIES, WE DOUBT THAT WE COULD HOLD ONTO SUCH A CASE OURSELVES. WHILE NOT A PART OF CALCULATION OF THE NATIONAL INTEREST, THIS POINT IS UNLIKELY TO BE LOST ON PANAMA AND WILL ENTER INTO WEIGHING THE PROBABILITY OF UNACCEPTABLY ADVERSE LOCAL REACTION.

14. EMBASSY POSITION: WE HAVE CONSIDERED ALL ASPECTS OF CASE AND BELIEVE THAT OPTION A IS THE PREFERABLE COURSE. WE WILL UNDOUBTEDLY BE PILLORIED AND DEMONSTRATIONS WILL PROBABLY ENSUE, CERTAINLY AT THE EMBASSY AND VERY LIKELY ALONG CANAL ZONE BORDER, E.G., SHALER TRIANGLE. EMBASSY BELIEVES CERTAIN STEPS SHOULD BE TAKEN TO LIMIT DAMAGE WHICH WOULD INCLUDE (A) EFFORT TO ENLIST COOPERATION OF GN (COL. NORIEGA) THROUGH ASSURANCES THAT SUSPECT WILL BE TRIED FOR ATTEMPT ON GUARDSMAN; (B) CAREFUL EXPLANATION TO FONMIN AS TO LEGAL REASONS WHY GOP EXTRADITION REQUEST MUST BE DECLINED; (C) POSSIBLE APPROACH TO GENERAL TORRIJOS THROUGH APPROPRIATE CHANNEL, FOR EXAMPLE, AMB. LEWIS OR RORY GONZALEZ. TORRIJOS CERTAINLY DOES NOT WANT SORDID CASE AS THIS TO JEOPARDIZE OUR LARGER INTERESTS AND HE COULD TURN OFF PRESS AND ALL BUT MOST MAVERICK STUDENTS BUT HIS MOOD AND REACTION WILL BE COLORED BY HIS PERCEPTION OF HOW TREATY NEGOTIATIONS ARE PROGRESSING.

15. IF DEPT. HAS SERIOUS RESERVATIONS ABOUT PROPOSED COURSE,  
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HOWEVER, WE BELIEVE ARMY COULD BE BROUGHT AROUND TO DROPPING  
CHARGES AGAINST CUEVAS THEREBY OPENING WAY FOR HIS  
EXTRADITION TO PANAMA. WOULD APPRECIATE GUIDANCE.  
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## Message Attributes

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**Status:** NATIVE  
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**TAGS:** PFOR, MILI, PN, PQ, US, (CUEVAS, ALBERTO)  
**To:** STATE  
**Type:** TE  
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